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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 11<sup>th</sup> October, 2021

+ **MAC.APP. 46/2021**

**SUMAN DEVI & ANR.** ..... Appellants

versus

**MAHESH ARORA & ANR.** ..... Respondents

**Advocates who appeared in this case:**

For the Petitioners : Mr. Devendra Kr. Sharma, Advocate

For the Respondents : Mr. A.K. Soni, Advocate for Ins. Co. (through VC)

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J.**

1. Appellant impugns award dated 25.02.2020 whereby the claim petition under Section 166 and 140 of the Motor Vehicle Act 1988 has been allowed and compensation awarded.

2. The claim petition has been filed by the parents of the deceased. The deceased along with certain other persons was coming from Chandigarh to Delhi in a car. The car was being driven at a very high speed in a rash and negligent manner. Due to high speed, the driver of the offending vehicle lost control because of which the car hit against

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an electric pole and overturned. Deceased was grievously injured and died on the way to the hospital.

3. By the impugned award, claim petition has been allowed and compensation awarded. There is no appeal filed by the insurance company impugning the award on merits. Claimants have filed the subject appeal seeking enhancement of compensation.

4. Learned counsel for the appellant submits that the tribunal has erred in the application of the judgment of the Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*. He submits that deceased was in a permanent employment and accordingly the compensation could have been awarded by taking into account future prospects at 50% and not at 40% as done by the tribunal.

5. Learned counsel submits that the witness Mr. Biplab Sen, General Manager (HR) had appeared from the employer – Scalenetworks, People Solutions, LLP, Bangalore. He had duly proved on record the terms of employment as Exb PW 1/1.

6. Learned counsel points out that in the very employment terms, it is mentioned that the retirement age is 60 years and employee would retire at the end of the month in which the employee attains 60 years of age. He further submits that even the witness had specifically stated

that the employment was to continue till the age of 60. He further points out that there is no cross-examination on the said aspect of the said witness.

7. Learned counsel appearing for the insurance company submits that tribunal has erred in awarding a sum of Rs. One lakh (i.e. Rs. 50,000/- to each of the claimants) under the head of compensation for 'Loss of Love and Affection'. He submits that compensation was awardable only under the head of 'Loss of Consortium' and that also at the rate of Rs. 40,000/- per claimant in terms of judgment of Supreme Court in '*United India Insurance Company Ltd. Vs. Satinder Kaur @ Satwinder Kaur 2020 SCC Online SC 410*'.

8. Perusal of Exb. PW1/1 (Colly.) shows that deceased was employed on 12.03.2014 and the employment was a fulltime employment and was not probationary. The retirement age specifically stated in the terms of employment was 60 years. Further, there is no cross-examination on the said aspect as well. In view of the same, tribunal has clearly erred in taking future prospects at 40% and not 50% as the deceased was in permanent employment.

9. Further it may be noticed that the tribunal has awarded a sum of Rs. One lakh under the head 'Loss of Love and Affection' whereas a sum of Rs. 80,000/- was liable to be awarded under the head of 'Loss

of Consortium’.

10. In view of the above, impugned award to the said extent requires a modification.

11. Accordingly, it is directed that the future prospects as awarded by the tribunal shall be taken at 50% instead of 40%. The award under the head of ‘Loss of Love and Affection’ shall be deleted. However, a sum of Rs. 80,000/- shall be awarded under the head ‘Loss of Consortium’ (i.e. Rs. 40,000/- to each of the claimants).

12. The appeal is accordingly allowed and the award modified in the above terms. The matter is remitted to the tribunal to re-compute the amount in terms of the directions contained herein.

13. Additional amount, along with interest at the same rate as awarded by the original award, shall be deposited by the respondent no. 2 – Insurance Company, with the tribunal within a period of four weeks of the computation by the tribunal.

14. The matter shall be listed before the tribunal on 11.11.2021 for the purpose of re-computation and compliance of the directions issued herein.

**SANJEEV SACHDEVA, J**

**OCTOBER 11, 2021/‘rs’**

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